

RECEIVED

MAR 18 1996

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Revision of Part 22 and Part 90 )  
of the Commission's Rules to Facilitate )  
Future Development of Paging Systems )

WT Docket No. 96-18

Implementation of Section 309(j) )  
of the Communications Act -- )  
Competitive Bidding )

PP Docket No. 93-253

To: The Commission

DOCKET FILE COPY ORIGINAL

COMMENTS OF PUERTO RICO TELEPHONE COMPANY

Joe D. Edge  
Tina M. Pidgeon  
DRINKER BIDDLE & REATH  
901 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 842-8800

Attorneys for  
PUERTO RICO TELEPHONE COMPANY

March 18, 1996

No. of Copies rec'd  
List ABCDE

064

## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION . . . . .	2
II. BETRS IS ESSENTIAL TO PRTC'S EFFORTS TO INCREASE TELEPHONE SERVICE PENETRATION . . . . .	3
III. AUCTIONING OF AUTHORIZATIONS FOR BETRS SPECTRUM IS INCONSISTENT WITH THE GOAL OF UNIVERSAL SERVICE. . . . .	4
A. The Commission Has Determined that Auction of BETRS Spectrum is Contrary to the Purpose of BETRS Service. . . . .	5
B. Competitive Bidding May Frustrate the Capability to Provide Cost-Effective Rural Service . . . . .	7
C. The Proposal for Geographic Partitioning Must be Clarified and Considered Further. . . . .	8
IV. THE COMMISSION SHOULD CONSIDER CARVING OUT A BETRS SPECTRUM BLOCK. . . . .	8
V. CONCLUSION . . . . .	9

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Revision of Part 22 and Part 90	)	WT Docket No. 96-18
of the Commission's Rules to Facilitate	)	
Future Development of Paging Systems	)	
	)	
	)	
Implementation of Section 309(j)	)	PP Docket No. 93-253
of the Communications Act --	)	
Competitive Bidding	)	

**COMMENTS OF PUERTO RICO TELEPHONE COMPANY**

Puerto Rico Telephone Company ("PRTC"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules,<sup>1</sup> hereby comments on the Commission's Notice of Proposed Rule Making ("NPRM") in the captioned proceeding.<sup>2</sup> In the NPRM the Commission seeks comments on its proposal to require competitive bidding among mutually exclusive paging and BETRS applicants.<sup>3</sup> The Commission has also requested comment on whether it should permit geographic partitioning of licensing areas to make spectrum available to BETRS operators in sparsely populated regions.

---

1. 47 C.F.R. § 1.415.

2. FCC 96-52, released February 9, 1996.

3. Channel pairs 152/158 MHz and 454/459 MHz are used by both BETRS and paging services. Id. at ¶ 29.

## **I. INTRODUCTION**

PRTC is a wholly-owned subsidiary of the Puerto Rico Telephone Authority ("PRTA"), a government instrumentality of the Commonwealth of Puerto Rico.<sup>4</sup> PRTC provides wireline telephone service throughout the urban and rural areas of the island of Puerto Rico.

Over the past several years, PRTC has made tremendous strides toward increasing its overall service penetration rate. PRTC has concentrated recent efforts on reaching unserved rural areas; however, the mountainous and rugged terrain in certain areas of Puerto Rico make the installation of wireline infrastructure prohibitively expensive. Accordingly, PRTC has been required to consider methods of providing service other than traditional wireline service. Basic Exchange Telephone Radio Service ("BETRS") has proven to be a cost-effective alternative. Competitive bidding for BETRS spectrum may increase prohibitively the cost of providing this service. Therefore, PRTC urges the Commission to reaffirm its current policy that competitive bidding is not an appropriate means by which to allocate BETRS spectrum.

---

4. Law Number 25 of the Commonwealth of Puerto Rico, approved May 6, 1974, established PRTA as a government corporation and provided for the purchase of PRTC by PRTA. P.R. LAWS ANN. tit. 27, § 404.

**II. BETRS IS ESSENTIAL TO PRTC'S EFFORTS TO INCREASE TELEPHONE SERVICE PENETRATION.**

---

The Commonwealth of Puerto Rico acquired PRTC in 1974 to improve the unacceptable level of telephone service development on the island. Telephone service penetration in Puerto Rico was barely at 25 percent in 1974. In the same year, penetration in the mainland United States was at 90 percent.

Since 1974, PRTC has made great strides in extending telephone service throughout Puerto Rico, and modern facilities are now widely available. Last year alone, PRTC increased penetration by 4 percent, and a similar increase should be achieved this year. Nevertheless, telephone penetration in Puerto Rico remains low by United States standards. United States telephone penetration is now 93.8 percent nationally,<sup>5</sup> while overall penetration in Puerto Rico is 71 percent and below 50 percent in some areas of the island.

As a government entity, PRTC has a social responsibility to provide local exchange service to all Puerto Rico citizens. However, the mountainous terrain spanning parts of the island makes widespread installation of wireline facilities cost-prohibitive.<sup>6</sup> These conditions are precisely the type

---

5. Federal-State Joint Board Staff, Monitoring Report, CC Docket No. 87-339, Table 1.2 at 27 (May 1995) ("1995 Monitoring Report"). Only three states have penetration rates below 90 percent: Mississippi, 88.6 percent; New Mexico, 88.3 percent; and South Carolina, 89.4 percent. Id.

6. The cost per local loop to install wireline service for the areas affected by these applications ranges from \$5,000 to \$10,000, and in some cases may exceed \$15,000. In contrast, the  
(continued...)

anticipated when the Commission approved BETRS to provide service to areas where "the cost of bringing wire or cable to their remote locations is prohibitive." In the Matter of Basic Exchange Telecommunications Radio Service, Report and Order, 3 FCC Rcd 214 (1988), on recon., 4 FCC Rcd 5017 (1989).

PRTC's current plans include further deployment of BETRS technology to reach less accessible regions of the island.<sup>7</sup> BETRS technology permits PRTC to offer service to individuals who have never experienced the health, social, and economic benefits of basic telephone service. For example, PRTC forecasts that within two years due to BETRS technology, it will be able to offer service for the first time to an estimated 6,000 citizens. The key to continued utilization of BETRS to improve rural service penetration is the cost-effective nature of the service.

### **III. AUCTIONING OF AUTHORIZATIONS FOR BETRS SPECTRUM IS INCONSISTENT WITH THE GOAL OF UNIVERSAL SERVICE.**

When the Commission approved BETRS in 1988, the service was heralded as a "major step by the Commission in the pursuit of [its] goal of extending basic telephone service to as many Americans as possible." BETRS Report and Order, 3 FCC Rcd at

---

6. (...continued)

national average cost per local loop is \$243. Id., Table 3.7 at 86. Radio service, which can be provided to the same areas for less than \$2,600 per subscriber, is the clear option for PRTC as part of its ongoing effort to increase telephone service availability.

7. PRTC holds BETRS authorizations in the 454 MHz frequency range and is authorized by waiver to provide BETRS in the 453 MHz range, generally assigned for local government (Part 90) use.

219. BETRS provides a cost-effective option to local exchange carriers for offering telephone service to presently unserved rural areas. Policies that facilitate and promote proliferation of the service will aid the Commission in carrying out its most important statutory mission:

to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges . . . .

47 U.S.C. 151.

**A. The Commission Has Determined that Auction of BETRS Spectrum is Contrary to the Purpose of BETRS Service.**

The Commission has previously acknowledged that subjecting a rural radio applicant to competitive bidding requirements would be inimical to the mission of providing universal service. This mission is incorporated by reference into the competitive bidding provisions. 47 U.S.C. § 309(j)(3). In its Competitive Bidding proceeding, the Commission concluded that

[i]t would not serve the public interest for the Commission to establish services such as the BETRS as a potentially less costly alternative to landline service and then require a BETRS applicant to bid against a radio common carrier applicant for those frequencies.

In the Matter of Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Second Report and Order, 9 FCC Rcd 2348, 2356 ¶ 46 (1994). The policy underpinnings for the Commission's finding in the Competitive Bidding proceeding are no less applicable as the Commission undertakes to revise paging rules in the instant proceeding.

It is well established that "an agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance." Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 42 (1983)

(emphasis added). Thus, having adopted the policy that BETRS spectrum should not be subject to auction, the Commission's faces a heightened burden to justify a rescission of this policy.<sup>8</sup>

This "reasoned analysis" for rescinding a rule must be based on the record, after notice and opportunity to comment. Id. at 43-44. Before the Commission approves competitive bidding in the case of mutually exclusive BETRS and paging applications, it must first substantiate why the existing policy — itself the product of the administrative rulemaking process — is no longer suitable. Indeed, the public policy argument in favor of changing the current method of licensing paging service on a site-by-site basis is by no means evident.

---

8. In State Farm the Supreme Court made clear that an agency rescinding a rule must confront the premise that the rule was properly adopted in the first instance:

Revocation [of a rule] constitutes a reversal of the agency's former views as to the proper course. A settled course of behavior embodies the agency's informed judgment that, by pursuing that course, it will carry out the policies committed to it by Congress. There is, then, at least a presumption that those policies will be carried out best if the settled rule is adhered to.

State Farm, 463 U.S. at 41-42 (quoting Atchison, Topeka & Santa Fe Ry. Co. v. Wichita Bd. of Trade, 412 U.S. 800, 807-08 (1973)) (quotations omitted).



**B. Competitive Bidding May Frustrate the Capability to Provide Cost-Effective Rural Service.**

Competitive bidding for spectrum to provide BETRS in rural areas is not sound public policy. The price for spectrum is set based upon its use in heavily populated urban areas. If local exchange carriers serving rural areas must pay this price for spectrum to serve very small rural constituencies, wireless local loop may be financially infeasible. Thus, the auction process will have eliminated a viable technological alternative for serving those who are unserved today. This outcome cannot possibly be consistent with the Commission's universal service mission.

Moreover, build-out requirements that are attached to a license acquired by auction will skew the service offering to more populated areas. In its NPRM, the Commission has tentatively concluded that paging licensees will be required to provide coverage to one-third of the population within a geographic license area within three years of the initial license grant, and to two-thirds of the population at the end of five years, or provide "substantial service" within that time. NPRM at ¶ 41. A licensee who must offer the service to a certain percentage of the population within a limited time period can do so most efficiently by installing infrastructure in well-populated areas. Build-out requirements can have the practical effect of hindering service availability in rural markets, thereby inhibiting service in rural areas. Therefore, to encourage the implementation of BETRS to serve rural areas, any

BETRS spectrum that may ultimately be acquired by auction should not be subject to the build-out requirements.

**C. The Proposal for Geographic Partitioning Must be Clarified and Considered Further.**

Geographic partitioning may alleviate the cost-prohibitive aspect of bidding for BETRS spectrum. By this device, a BETRS provider potentially could limit its auction costs proportional to the economic value of the service that will be provided to a rural area. In addition, a partitioned licensee may be relieved of carrying the entire burden of meeting a wide-area geographic build-out requirement. However, in considering this proposal further, the Commission should clarify whether geographic partitioning would be available only to rural telephone companies or to any provider of BETRS.

**IV. THE COMMISSION SHOULD CONSIDER CARVING OUT A BETRS SPECTRUM BLOCK.**

The universal service implications raised in this and another ongoing proceeding<sup>9</sup> demonstrate that the Commission should also consider carving out spectrum especially reserved for BETRS. A dedicated BETRS frequency block will encourage carriers to utilize the service as a means for reaching unserved areas.

---

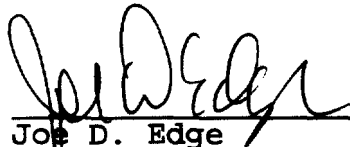
9. The Commission has proposed recently to eliminate half of the spectrum allocated on a co-primary basis for BETRS. See In the Matter of Amendments of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, ¶¶ 287-288 (released December 15, 1995). PRTC raised similar concerns with respect to BETRS spectrum allocation in its Comments (submitted February 15, 1996) and Reply Comments (submitted March 1, 1996).

Carriers will in turn create a demand upon equipment providers to improve and develop BETRS equipment.

V. CONCLUSION

BETRS technology is available so that local exchange companies can provide basic telephone service to rural customers in a cost-effective manner. It is counter-intuitive, therefore, to require BETRS applicants to engage in competitive bidding for this service. Indeed, competitive bidding may have the effect of pricing the service out of its cost-effective range, thereby defeating the very purpose for the development of BETRS technology. PRTC respectfully urges the Commission to resolve the issue of spectrum availability for BETRS by carving out spectrum for its sole deployment.

Respectfully submitted,



Joe D. Edge  
Tina M. Pidgeon  
DRINKER BIDDLE & REATH  
901 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 842-8800

Attorneys for  
PUERTO RICO TELEPHONE COMPANY

March 18, 1996

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Comments of Puerto Rico Telephone Company has been served by hand delivery on the 18th day of March, 1996 upon:

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W./Room 222  
Washington, D.C. 20554

  
Tina M. Pidgeon